

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

THURMAN KIRKWOOD

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:16CV119-LG-RHW

MARSHALL FISHER et al

DEFENDANTS

PROPOSED FINDINGS OF FACT AND RECOMMENDATION

Plaintiff Thurman Kirkwood, proceeding *pro se* and *in forma pauperis*, filed a 42 U.S.C. § 1983 prisoner civil rights complaint alleging that prison officials at the South Mississippi Correctional Institution (SMCI) failed to protect him from an assault by other inmates and retaliated against him. Doc. [1]. Plaintiff named 15 individuals as defendants. Among the named defendants was Jesse Patrick. Patrick has filed a *pro se* motion to dismiss in which he argues that he was not employed at SMCI during the time frame for which Plaintiff alleged that his constitutional rights were violated. Doc. [38]. The Court conducted a screening hearing on August 16, 2016. At the hearing, counsel for some of the other SMCI Defendants represented that Patrick was not employed by SMCI at the time of the alleged constitutional violations. Also at the hearing, Plaintiff agreed to dismiss the complaint against Defendant Jesse Patrick.

RECOMMENDATION

Based on the foregoing, the undersigned recommends Defendant Jesse Patrick's [38] Motion to Dismiss be GRANTED and that the claims against Patrick be dismissed with prejudice.

NOTICE OF RIGHT TO APPEAL/OBJECT

Pursuant to 28 U.S.C. § 636(b)(1), any party who desires to object to this report must serve and file written objections within fourteen (14) days after being served with a copy unless

the time period is modified by the District Court. A party filing objections must specifically identify those findings, conclusions and recommendations to which objections are being made; the District Court need not consider frivolous, conclusive or general objections. Such party shall file the objections with the Clerk of the Court and serve the objections on the District Judge and on all other parties. A party's failure to file such objections to the proposed findings, conclusions and recommendation contained in this report shall bar that party from a de novo determination by the District Court. Additionally, a party's failure to file written objections to the proposed findings, conclusions, and recommendation contained in this report within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the proposed **factual findings and legal conclusions** that have been accepted by the district court and for which there is no written objection. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

SO ORDERED, this the 29th day of August, 2016.

/s/ Robert H. Walker
ROBERT H. WALKER
UNITED STATES MAGISTRATE JUDGE